



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. F331153

NHP HARWICH, LLC
Appellant.

BOARD OF ASSESSORS OF THE
TOWN OF HARWICH
Appellee.

DECISION WITH FINDINGS

The assessors' Motion to Dismiss is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the pleadings and affidavits submitted by the parties and the arguments advanced at the April 27, 2017 hearing of the assessors' Motion to Dismiss, the Board finds and rules as follows.

This appeal concerns the fiscal year 2016 assessment on a parcel of land with a building thereon located at 111 Headwaters Dr. in the Town of Harwich ("Town"). The parties agree that the first installment of the actual tax bill for fiscal year 2016 ("third-quarter bill"), due on February 1, 2016, was not processed and considered paid by the Town until one day later, February 2, 2016. Accordingly, interest was incurred as a result of the late payment.

The parties also offered affidavits, which establish the following uncontested facts:

1. On Wednesday, January 27, 2016, the check for payment of the appellant's third-quarter bill was mailed from a Post Office in Gaithersburg, Maryland to the proper address for mailing tax bill payments, a post office box in Reading.
2. The Town engaged Century Bank to provide "lock box" banking services for the fiscal year at issue.
3. As part of its usual business practice, Century Bank picks up mail sent to the Town's post office box in Reading on a daily basis and delivers the mail to Century Bank's lock box processing center.
4. Once at the processing center, mail is opened and payments are put through an automated process which records information on both the check and tax remittances.

5. Century Bank's business practice is to process all checks received at the lock box as of the date of receipt.
6. Once the checks are processed, a deposit is made to the Town's account and a data file is created for the Town containing the day's payment details.
7. Copies of the appellant's check for the third-quarter payment and the Town's records indicate that the check was processed and deposited on Tuesday, February 2, 2016.
8. Interest in the amount of \$11.12 was incurred on the third-quarter bill.

The parties' fundamental disagreement concerns the burden of proof: the assessors maintain that the burden of proving facts essential to the Board's jurisdiction lies with the appellant, while the appellant maintains that the assessors, as the moving party, have the burden of proof at this stage of the proceedings. The Board agrees with the assessors.

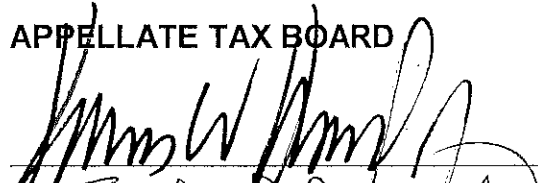
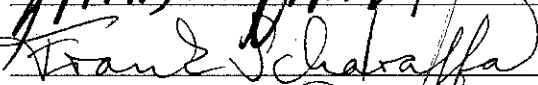
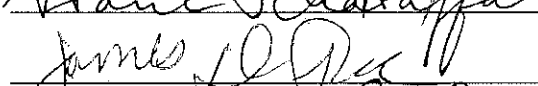

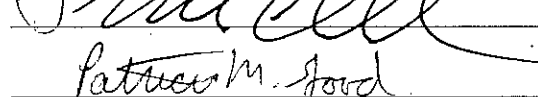
"The burden of establishing facts essential to the jurisdiction of the board . . . was on the taxpayer who took the appeal from the decision of the board of assessors." ***Assessors of Boston v. Suffolk Law School***, 295 Mass. 489, 496 (1936). "The venerable and 'fundamental rule as to burden of proof is, that whenever the existence of any fact is necessary in order that a party may make out [its] case . . . the burden is on such party to show the existence of such fact.'" ***Chung Wah Hong Co., Inc. v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Report 2013-420, 452 (quoting ***Willet v. Rich***, 142 Mass. 356, 357 (1886)).

The appellant's argument that the Town cannot show that the business practices outlined above were followed with respect to the appellant's check and, therefore, there is insufficient evidence to prove late receipt, asks too much. Requiring the assessors to prove, presumably on the memory or personal knowledge of a particular individual or individuals, that a specific check was processed in accordance with a clearly established business practice would impermissibly shift the burden of proof.

Accordingly, the Board finds and rules that the appellant failed to meet its burden of proving a fact essential to the Board's jurisdiction and therefore finds that the appellant's third-quarter bill was paid late and incurred interest.

The Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$3,000; (2) interest is incurred on the actual tax bill; and (3) the three-year average provision under §§ 64 and 65 is not met. See, e.g. ***Massachusetts Inst. Of Tech. v. Assessors of Cambridge***, 422 Mass. 337, 451-52 (1996); ***Columbia Pontiac Co. v. Assessors of Boston***, 395 Mass. 1010, 1011 (1985) ("payment of the full amount of the tax due without incurring interest charges is a condition precedent to the board's jurisdiction over an abatement appeal.").

In the present appeal, the tax due for the fiscal year at issue exceeds \$3,000, interest was incurred on the actual tax bill, and the appellant does not qualify under the three-year average provision. Accordingly, the Motion is allowed and the appeal is dismissed for lack of jurisdiction.

APPELLATE TAX BOARD

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

Attest: 
Clerk of the Board

Date: **MAY - 4 2017**
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.